

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE;
DR. ANDREA WESLEY; DR. JOSEPH
WESLEY; ROBERT EVANS; GARY
FREDERICKS; PAMELA HAMMER**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:22-cv-734-DPJ-HSO-LHS

**STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES, *in his
official capacity as Governor of Mississippi;*
LYNN FITCH, *in her official capacity as
Attorney General of Mississippi;* MICHAEL
WATSON, *in his official capacity as Secretary
of State of Mississippi;* DAN EUBANKS, *in his
official capacity as Ranking House Member of
the Standing Joint Legislative Committee on
Reapportionment and Redistricting;* and DEAN
KIRBY, *in his official capacity as Vice
Chairman of the Standing Joint Legislative
Committee on Reapportionment and
Redistricting***

DEFENDANTS

LEGISLATIVE DEFENDANTS' MOTION TO DISMISS

In accordance with Rules 12(b)(1) and 12(b)(6), *Federal Rules of Civil Procedure*, Defendants Dan Eubanks, in his official capacity as a Member of the Standing Joint Legislative Committee on Reapportionment and Redistricting,¹ and Dean Kirby, in his official capacity as

¹ The “Standing Joint Committee” is the commonly used name of the Standing Joint Legislative Committee on Reapportionment, which is charged by statute with reapportioning the two chambers of the State Legislature, and the Standing Joint Congressional Redistricting Committee, which is charged by statute with redistricting the State’s Congressional seats. *See* MISS. CODE ANN. §§ 5-3-91, 5-3-121.

Vice Chairman of the Standing Joint Legislative Committee on Reapportionment and Redistricting, (hereinafter collectively “the Legislative Defendants”) respectfully move to dismiss Plaintiffs’ claims against them. In support of their request, the Legislative Defendants will show the following:

1. The Court should dismiss all claims against the Legislative Defendants because the claims here—that a state law violates Section 2 of the Voting Rights Act and the Fourteenth Amendment—are barred by a lack of standing, Eleventh Amendment sovereign immunity, and legislative immunity.

2. This lawsuit seeks declaratory and injunctive relief against the enforcement of the 2022 Mississippi laws establishing state senate and state house legislative maps in light of the 2020 census. The Legislative Defendants have no role in enforcing or executing those laws. They are not executive officials. They are legislators. They are improper defendants multiple times over.

3. *First*, this Court lacks subject-matter jurisdiction over any claims against the Legislative Defendants. Those defendants have no role in enforcing the 2022 laws, so any relief ordered against those defendants would not redress Plaintiffs’ alleged injury. Plaintiffs thus lack standing to sue the Legislative Defendants.

4. *Second*, sovereign immunity bars Plaintiffs’ Fourteenth Amendment claim. That claim is effectively against the State. And no exception to sovereign immunity applies because the Legislative Defendants have no role in executing the challenged laws.

5. *Third*, legislative immunity bars all claims against the Legislative Defendants. The Legislative Defendants have been sued by Plaintiffs in their official legislative capacities related to their legislative acts. They are immune from such suits.

6. The Legislative Defendants adopt and incorporate herewith, as if fully and completely set forth herein, the arguments and authorities set forth in the *Memorandum of Authorities in Support of Legislative Defendants' Motion to Dismiss*, being filed contemporaneously herewith.

7. On the basis of the grounds asserted herein and as further set forth in the aforementioned memorandum of authorities, Plaintiffs' claims against the Legislative Defendants are barred by a lack of standing and the Eleventh Amendment, and this Court lacks subject-matter jurisdiction over such claims. Alternatively, Plaintiffs' claims against the Legislative Defendants are barred by legislative immunity.

8. Defense counsel has conferred with Plaintiffs' counsel regarding the prospect of a voluntary dismissal of the Legislative Defendants. To date, Plaintiffs have declined to dismiss their claims against the Legislative Defendants, thereby necessitating the filing of the instant motion.

WHEREFORE, PREMISES CONSIDERED, the Legislative Defendants respectfully request that the Court make and enter its Order dismissing Plaintiffs' claims against the Legislative Defendants pursuant to FED. R. CIV. P. 12(b)(1) or FED. R. CIV. P. 12(b)(6). The Legislative Defendants seek such other, further and additional relief as to which they may be entitled in the premises.

THIS the 10th day of February, 2023.

Respectfully submitted,

DAN EUBANKS, IN HIS OFFICIAL CAPACITY
AS A MEMBER OF THE STANDING JOINT
LEGISLATIVE COMMITTEE ON
REAPPORTIONMENT AND REDISTRICTING,
AND DEAN KIRBY, IN HIS OFFICIAL
CAPACITY AS VICE CHAIRMAN OF THE

STANDING JOINT LEGISLATIVE
COMMITTEE ON REAPPORTIONMENT AND
REDISTRICTING, DEFENDANTS

By: LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By: s/Rex M. Shannon III
REX M. SHANNON III (MB #102974)
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CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for the above-named defendants, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 10th day of February, 2023.

s/Rex M. Shannon III
REX M. SHANNON III